

N.C.Alexander Vs. the Chief Commissioner of Customs and ors.

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Court : Chennai

Decided On : Mar-01-2011

Judge : M.Jaichandren, J.

Acts : [Evidence Act, 1872](#) - Section 74; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No.4981 OF 2011

Appellant : N.C.Alexander

Respondent : The Chief Commissioner of Customs and ors.

Advocate for Def. : Mr.Ravi Anantha Padmanabhan, Adv.

Advocate for Pet/Ap. : Mr.B.Satish Sundar, Adv.

Judgement :

O R D E R

1. The petitioner is a trading in fruits by importing them from various countries, including the United States of America. He also does business in local sales in fruits. He has been importing apples from the United States of America for the past seven years, on the basis of the contracts entered into with the suppliers. Almost all the imports of the apples had been made through Chennai Seaport in specially refrigerated containers, as the goods are highly perishable in nature. The goods had been duly assessed and cleared by the customs and the port authorities, on payment of the appropriate duty. For the purpose of carrying on the business, by

importing fruits, the petitioner has been allotted the Importer Exporter Code No.0403001013, by the office of the Zonal JDGFT, Chennai.

2. It has been further stated that the petitioner is also assessed to income tax. The import of apples, especially, from the United States of America, has been on the basis of the contract entered into with the foreign supplier, namely, M/s.F.C.Bloxom Company Produce, Seattle, Washington, United States of America. Such contracts are duly registered and certified as public documents, validated under the Hague Convention of the United nations, 1961 and it has the same meaning, as defined under Section 74 of the Indian [Evidence Act, 1872](#).

3. It has been further stated that the foreign supplier had started dispatching fresh apples, as per the terms of the contract, by raising commercial invoices for the supply of 16688 cartons of 'Red Delicious Apple' of "First Fruits" brand, of different counts and variety. The unit price of the apples that had arrived from the United States of America varies from U.S. Dollars 11 to 15 and the total consideration payable by import of the apples works out to U.S. Dollars 2,28,924/-, which ought to be remitted within 15 days of the arrival of the consignment, as per the terms of the contract with the petitioner's bankers.

4. It has been further stated that the consignments of apples dispatched under two bills of Lading Nos.553123770, dated 03.02.2011 and 552997459, dated 02.02.2011, had arrived at the Chennai Seaport from the port of loading at Seattle, United States of America. The petitioner had filed two bills of entry Nos.791788 and 792016, dated 25.2.2011, with the office of the second respondent. However, as the assessment has not been done, the petitioner had requested for provisional assessment and for the release of the goods on furnishing of 30% of differential duty, as cash deposit and the balance 70%, by personal bond, in terms of the orders passed by this Court arising out of similar facts and circumstances. The petitioner had sought the provisional clearance of the goods in terms of Section 18 of the Customs Act, 1962, read with Customs (Provisional Duty Assessment) Regulations, 1963. However, the respondents are causing undue delay in the assessment and in releasing the goods in question. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article

5. The learned counsel appearing for the petitioner had submitted that, as per the well settled principles, the contract price shown in the contract, entered into between the foreign supplier and the importer, should be accepted, until clear evidence is shown that it is not the appropriate price of the imported goods. The petitioner has been importing the apples from the United States of America for many years and the question of undervaluing the contract price of the goods does not arise. In fact, a sum of about Rupees 70 lakhs, paid by the petitioner as differential duty, is with the respondent pending the adjudication process. While so, it is not open to the respondents to make wild allegations against the petitioner, without having sufficient and appropriate reasons to do so. Further, if certain irregularities are found in the pricing of the goods, it would be open to the respondents to impose additional duty on the same and to take appropriate action against the petitioner, in accordance with law. However, the respondents are not entitled to delay the release of the imported goods, which are highly perishable in nature. Further, the petitioner would be incurring monetary loss by paying heavy demurrage charges, if the goods are not cleared at the earliest possible. It would also lead to further financial loss, as the petitioner would be liable to pay heavy damages for the breach of the contractual obligations with the foreign supplier, as well as the local distributors.

6. The learned counsel had also submitted that nothing is shown in the show cause notice, either about the under invoicing of the goods, or about the alleged extra- commercial considerations, as alleged by the respondents.

7. Per contra, the learned counsel appearing for the respondents had submitted that certain serious irregularities had taken place. In the communication of the Consulate General of India, New York, CGNY/Trade/ 301/10/2008, dated 20.4.2009, it has been stated as follows: "3. It may be perused from the enclosed documents that the importers have under declared the value to the extent of US \$ 502929. Thus the undervaluation is over Rs.2.5 crores and the differential duty liability is to the tune of Rs.1.25 crore approximately. It may also be noted that the figures in columns Qty and unit price are covered with black ink and not visible. US

officials concerned have been requested to explore the possibility of obtaining copies of the said documents including the figures in the above said columns. As in the cases of exports from S.A. International Inc., New Castle, WA, it is strongly suspected that the importer resorted to misdeclaration of descriptions of goods like overstating quantities of low valued varieties and understating quantities of high valued varieties.

4. In respect of other suppliers of fresh apples, it has been noticed that the difference between the actual transaction value and the value declared to Customs has been shown as advance paid. However, as in the case of first batch of documents forwarded, the invoices in the subject case do not specifically mention as the advance paid. The modus operandi is by raising parallel set of invoices and transferring the undeclared amounts by way of wire transfers."

8. The learned counsel appearing for the respondents had also submitted that based on such information received from the Consulate General, a show cause notice has been issued to the petitioner and further investigation is being carried on. Therefore, the respondents have detained the goods pending such investigation. It had also been stated that on a comparative study of the commercial invoices of other importers, it is found that the per unit value of the apples has been priced at U.S. Dollars 25 to 27, whereas in the agreement entered into between the foreign supplier and the petitioner shows the price of apples per unit is between 11 to 19 U.S. Dollars, in various grades and sizes. As such, the petitioner has been evading the payment of a huge amount of customs duty, which could be a few crores of rupees in total.

9. In view of the averments made in the affidavit filed in support of the writ petition and in view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, it is seen that the respondents had not been in a position to show that the present writ petition is substantially different from the others, wherein similar orders had been passed, releasing the detained goods. It is also seen that an order had been passed by this Court, on 24.4.2007, in W.A.No.652 of 2007, granting the provisional release of goods, on certain conditions.

10. Further, as the goods in question are perishable in nature, this Court finds it appropriate to pass similar orders, directing the respondents to release the goods in question. It is also noted that a number of orders had been passed by this Court in similar facts and circumstances, in the various writ petitions arising out of similar facts and circumstances, directing the respondents to release the goods provisionally imposing similar conditions, as in the order, dated 24.4.2007, made in W.A.No.652 of 2007.

11. In such circumstances, this Court finds it appropriate to direct the respondents to release the goods in question, on the petitioner fulfilling the following conditions: The petitioner shall pay 30% of the differential duty, and for the balance amount, the petitioner shall furnish a personal bond. On compliance of both the conditions, the respondents shall release the goods in question, forthwith. However, it is made clear that it would be open to the respondents to pass final orders, on completion of the adjudication process, in respect of the payment of customs duty, liable to be paid by the petitioner, if any, and to initiate other appropriate proceedings against the petitioner, if he is found to have evaded payment of the customs duty, as alleged by the respondents, in accordance with the relevant provisions of law. The petitioner shall co-operate, fully, in the proceedings that may be initiated by the respondents, for the assessment of customs duty.

12. The writ petition is ordered accordingly. No costs. Connected M.P.No.1 of 2011 is closed.

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